

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 01-244
(Judge Charles W. Cope)

Case No. SC01-2670

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**SPECIAL COUNSEL'S IN LIMINE MOTION TO EXCLUDE EVIDENCE OF
TREATMENT FOR ALCOHOLISM OR, IN THE ALTERNATIVE, TO COMPEL**

The Special Counsel hereby moves for an order excluding any evidence that Judge Cope has sought or received treatment for alcohol abuse and states:

1. Counts I-IV of the Amended Notice of Formal Charges allege misconduct occurring at times that Judge Cope was allegedly intoxicated. Accordingly, any evidence that Judge Cope has sought and received treatment for alcohol abuse would be relevant as potentially mitigating evidence in the final hearing in this case.

2. Pursuant to express releases of this information to the Judicial Qualifications Commission signed by Judge Cope (see Exhibits A and B), the Investigative Panel obtained records related to alcohol abuse treatment sought by Judge Cope. These records contain hearsay statements that suggest that Judge Cope's treatment was not genuinely sought and/or was unsuccessful. For example, the records contain a statement that Judge Cope's wife reported that Judge Cope checked into a motel and became very intoxicated shortly after a month-long stay in a residential treatment facility. They also contain statements suggesting that Judge Cope was not candid in seeking assistance. For example, the records indicate that his arrest in California was simply for disorderly conduct and that all he did was knock on someone's door.

3. To verify these statements and to evaluate any claim of treatment offered by Judge Cope in mitigation, the Special Counsel must have the opportunity to pursue discovery regarding this treatment to prepare for the final hearing set for June 24, 2002.

4. Thus, for example, the Special Counsel sought production of all records of such treatment. To date, Judge Cope has not complied with these requests. (See Affidavit of Special Counsel at ¶ 3, attached as **Exhibit C**.) The Hearing Panel denied the Special Counsel's subsequent motion to compel.

5. During a colloquy at Judge Cope's deposition, the Special Counsel advised Judge Cope that if he intended to offer evidence of alcohol treatment in mitigation, the Special Counsel would question him about it. (See Deposition of Charles W. Cope vol. IV, at 594:25 – 595:11, attached as **Exhibit D**.) Through counsel, Judge Cope objected to this line of questioning and stated that he had not yet decided whether to offer such evidence. (Id. at 595:18 – 596:18.) The parties agreed that Judge Cope would decide shortly and, if he decided to offer such evidence, the Special Counsel could continue his deposition and inquire about the treatment. (Id. at 597:7-25.)

6. Accordingly, the Special Counsel served Judge Cope with interrogatories on April 16, 2002, asking among other things whether Judge Cope intended to offer evidence of treatment. (See Special Counsel's Third Set of Interrogatories at ¶ 3, attached as **Exhibit E**.) Judge Cope's counsel has since informed the Special Counsel that Judge Cope intended to offer testimony by Dr. Walter Afield regarding treatment received by Judge Cope. (See Special Counsel Affidavit at ¶ 5.) On May 21, 2002, however, the Special Counsel received

a voice mail message from Judge Cope's counsel's secretary advising that the answer to the interrogatory would be "no." (Id. at ¶ 7.) To date, the Special Counsel has not received written, much less sworn, answers to these interrogatories. (Id. at ¶ 8.)

7. In order to effectively prepare for the final hearing, the Special Counsel requires a final answer as to whether Judge Cope will offer evidence of rehabilitation. If so, the Special Counsel should be entitled to full discovery on this issue.

8. Should this motion be granted and in the event that any member of the Hearing Panel asks whether Judge Cope has sought or received treatment for alcohol abuse, the Special Counsel further requests the Chair of the Hearing Panel to advise the remaining members of the panel that Judge Cope had the opportunity to present such evidence but after opposing discovery on the issue was ordered not to offer or refer to such evidence at the final hearing.

WHEREFORE, the Special Counsel hereby moves for an order excluding evidence of any alcohol treatment Judge Cope has sought or received and that, in the event a member of the Hearing Panel asks whether Judge Cope has sought or received treatment for alcohol abuse, the Chair of the Hearing Panel advise the remaining members of the panel that Judge Cope had the opportunity to present such evidence but after opposing discovery on the issue was ordered not to offer or refer to such evidence at the final hearing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. mail to: **Louis Kwall, Esq.**, Kwall, Showers & Coleman, P.A., 133 N. St. Harrison Ave., Clearwater, Florida 33755; **Robert W. Merkle, Jr., Esq.**, Co-Counsel for Respondent, 5510 W. La Salle Street, #300, Tampa, Florida 33607-1713; **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Ave., Miami, Florida 33175-1716; **John Beranek**,

Esq., Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32301; **Brooke S. Kennerly**, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602 this 31st day of May, 2002.

By:
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